

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

RONALD ZUESKI,

Plaintiff,

Case No. 07-10245

v.

**District Judge Denise Page Hood
Magistrate Judge R. Steven Whalen**

MICHIGAN STATE POLICE, et al.,

Defendant.

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**ORDER DENYING WITHOUT PREJUDICE
MOTIONS TO APPOINT COUNSEL**

Plaintiff, a *pro se* prison inmate in this civil rights action brought under 42 U.S.C. §1983, has filed a fourth motion for appointment of counsel [Docket #80]. His previous three motions [Docket #3, #29, and #71] were all denied without prejudice, pending the resolution of dispositive motions.

In his present motion, Plaintiff cites *Parham v. Johnson*, 126 F.3d 454 (3rd Cir. 1997), a Third Circuit case. *Parham* rejects the “exceptional circumstances” test taken by this Circuit in *Lavado v. Keohane*, 992 F.2d 601, 605-606 (6th Cir. 1993). Interestingly, *Lavado* was written by Judge Nathaniel Jones, who also wrote the opinion in *Parham* while sitting in the Third Circuit by designation. In *Parham*, Judge Jones expressly repudiated the approach taken in *Lavado*, in favor of a six-factor inquiry.

Of course, *Lavado*, not *Parham*, is the law of this Circuit. More importantly, both cases recognize that the appointment of counsel in a civil case is not a matter of right, but is addressed to the court's discretion. In *Parham*, a Magistrate Judge had initially ordered that counsel be appointed for the plaintiff, but for some unknown reason, that order was never adhered to. Two years later, the district judge denied the plaintiff's renewed request for counsel, forcing him to actually go to trial *pro se*. The judge ultimately granted a directed verdict to the defendant.

The Plaintiff in the present case is in a different position. Here, there are four summary judgment motions pending. *See* Docket #66, #67, #69 and #78. The latter motion is based on qualified immunity. By separate order, this Court has granted the Plaintiff additional time to respond to the summary judgment motions. At this point, the Plaintiff is not being forced to go to trial without counsel, and, as this Court's previous orders state, he may renew his request for counsel if he survives the dispositive motions.

Therefore, Plaintiff's motion for a court appointed lawyer [Docket #80] is DENIED WITHOUT PREJUDICE.

S/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: January 11, 2008

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on January 11, 2008.

S/G. Wilson

Judicial Assistant